

STATE OF MICHIGAN  
COURT OF APPEALS

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DELTA MANAGEMENT, INC.,

Plaintiff-Appellant,

v

HINKLE ENTERPRISES, INC., d/b/a ALL  
BRITE COLLISION, INC., DEVON HINKLE,  
and JULIE HINKLE,

Defendants-Appellees,

and

TOM STONE,

Defendant.

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UNPUBLISHED  
November 3, 2005

No. 253042  
Macomb Circuit Court  
LC No. 03-002297-CK

Before: Fort Hood, P.J., and White and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the circuit court's order setting aside a default and default judgment plaintiff had secured against defendants for the conversion of several vehicles. We vacate the circuit court's order and remand for further proceedings.

Plaintiff argues that the circuit court abused its discretion in granting defendants' motion because defendants did not timely file their motion and failed to satisfy the "good cause" and "meritorious defense" requirements under MCR 2.603(D).

Whether a default or a default judgment should be set aside is within the sound discretion of the trial court and will not be reversed on appeal absent a clear abuse of that discretion. *Amco Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 94; 666 NW2d 623 (2003). The setting aside of a default or default judgment is governed by MCR 2.603(D), which generally provides that the default and default judgment "may be set aside only if the motion is filed . . . within 21 days after the default judgment was entered." MCR 2.603(D)(2)(b). Moreover, a trial court may not order a default set aside unless the defaulted party demonstrates good cause and presents an affidavit of facts showing a meritorious defense. MCR 2.603(D)(1). Good cause sufficient to warrant setting aside a default or a default judgment may be a

substantial procedural defect or irregularity, a reasonable excuse for the failings that led to the default, or a showing that manifest injustice will result. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). "[I]f a party states a meritorious defense that would be absolute if proven, a lesser showing of 'good cause' will be required than if the defense were weaker, in order to prevent a manifest injustice." *Id.* at 233-234. However, in the case of a default, a finding of manifest injustice may not stand alone but may only follow after the requirements in MCR 2.603(D)(1) are satisfied. *Id.* at 234 n 7.

Here, defendants filed their motion more than twenty-one days after the default judgment was entered. Further, defendants failed to satisfy the “good cause” and “meritorious defense” requirements because they did not explain their delay in responding to the complaint and failed to file an affidavit of facts showing a meritorious defense. The circuit court should have either required that defendants satisfy the technical requirements of MCR 2.603, or it should have denied the motion. Because it did not do either, we must vacate its order. Beyond vacating the order, the undeveloped record makes review of the ultimate decision impossible. Accordingly, if the circuit court decides to set aside the default and default judgment on remand, we direct it to include in the record a full explanation of its factual and legal basis for doing so.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood  
/s/ Helene N. White  
/s/ Peter D. O’Connell